



**NORFOLK
SOUTHERN**

Norfolk Southern Corporation
Law Department
185 Spring Street, S.W.
Atlanta, Georgia 30303-9998

14965
RECORDATION NO. _____ Filed 1425

MAY 23 1986 -3 45 PM

David R. Willson
Senior General Attorney
404 529-2352

INTERSTATE COMMERCE COMMISSION

May 22, 1986
58104, 62350, 62370

Date 5/23/86
Fee \$ 10.00

Mr. James H. Bayne
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

CC Washington, D. C.

Dear Mr. Bayne:

I enclose six original counterparts of the document described in paragraph (1) hereof for recordation pursuant to Section 11303 of Title 49 of the U.S. Code and return, together with an original counterpart thereof for retention by the Commission.

In accordance with 49 CFR Part 1177 covering the recordation of documents, I advise you as follows:

- (1) The enclosed document is a Temporary Use Agreement dated as of May 15, 1986 between Mercantile-Safe Deposit and Trust Company, 2 Hopkins Plaza, Baltimore, Maryland 21203, Bailor, and Southern Railway Company, 185 Spring Street, S.W., Atlanta, Georgia 30303, Bailee.
- (2) The enclosed document is a "primary document" under 49 CFR §1177.1.
- (3) No cross-indexing of the enclosed document is requested.
- (4) The enclosed document was executed to evidence the grant by the Bailor to the Bailee of a temporary right to the use of certain railroad equipment, being:

22 SD60 Diesel-Electric Locomotives bearing the Bailee's initials and road numbers GSF-6629 through 6650, both inclusive, AAR designation C-C.

Each unit will be marked in letters not less than one-half inch in height with the words:

OWNERSHIP SUBJECT TO A SECURITY
AGREEMENT FILED WITH THE
INTERSTATE COMMERCE COMMISSION.

Mr. James H. Bayne
May 22, 1986
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- (5) The names and addresses of the parties to the enclosed document are shown in paragraph (1) hereof.
- (6) After recordation, the six original counterparts of the enclosed document not required by the Commission for recordation should be returned to David R. Willson, Esq., Senior General Attorney, Norfolk Southern Corporation, 185 Spring Street, S.W., Atlanta, GA 30303.
- (7) The recordation fee of \$10 is enclosed.
- (8) A short summary of the enclosed document for index use follows:

This is a Temporary Use Agreement dated as of May 15, 1986 between Mercantile-Safe Deposit and Trust Company, as Bailor, and Southern Railway Company, as Bailee, covering 22 Diesel-Electric Locomotives bearing Bailee's initials and road numbers GSF-6629—6650, both inclusive.

Please acknowledge receipt on the enclosed copy of this letter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "David R. Willson".

David R. Willson

Encl.

Interstate Commerce Commission

Washington, D.C. 20423

5/23/86

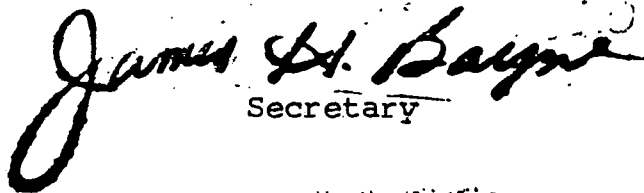
OFFICE OF THE SECRETARY

David R. Willson
Norfolk Southern Corp.
185 Spring Street S.W.
Atlanta, Georgia 30303-9998

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 5/23/86 at 3:45pm and assigned recordation number(s). 14965

Sincerely yours,


Secretary

Enclosure(s)

SE-30
(7/79)

REGISTRATION NO. 4965 Filed 1425

MAY 23 1986 -3 45 PM

INTERSTATE COMMERCE COMMISSION

TEMPORARY USE AGREEMENT

Dated as of May 15, 1986

between

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY

and

SOUTHERN RAILWAY COMPANY

Executed in eight Counterparts of
which this is Counterpart No. 1

TEMPORARY USE AGREEMENT

THIS AGREEMENT, dated as of May 15, 1986, by and between MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation ("Nominee"), and SOUTHERN RAILWAY COMPANY, a Virginia corporation ("Railroad");

WITNESSETH THAT:

WHEREAS, Railroad desires to acquire 22 new SD60 Diesel Electric Locomotives, to bear Railroad's road numbers GSF 6629-6650, both inclusive, such locomotives being hereinafter collectively called the "Units;"

WHEREAS, by its Purchase Order numbered HN5806, dated as of November 19, 1985, as modified or amended (the "Purchase Order"), Railroad has contracted with General Motors Corporation (Electro-Motive Division) (the "Builder") to build the Units;

WHEREAS, Railroad intends to finance the acquisition of the Units through the issuance of equipment trust certificates pursuant to (i) an Equipment Trust Agreement to be dated as of June 1, 1986, between Railroad and Mercantile-Safe Deposit and Trust Company, as Trustee (the "Trustee"), and (ii) an Equipment Trust Agreement to be dated as of August 1, 1986, between Railroad and the Trustee (said Equipment Trust Agreements being hereafter referred to as the "Trust Agreements");

WHEREAS, pursuant to the terms of the Trust Agreements, the Trustee will take title to and will pay the purchase price in respect of designated Units but only after such Units are delivered to the Railroad as agent for the Trustee;

WHEREAS, pursuant to the terms of the Purchase Order, Railroad has agreed to cause the aggregate purchase price for all the Units to be paid to the Builder six days after the first Unit is delivered (the "Payment Date") and before all the Units are delivered;

WHEREAS, inasmuch as the Trustee will not be in a position on the Payment Date to pay for any undelivered Units pursuant to the Trust Agreements, Railroad, in order that it may cause the purchase price to be paid to the Builder on the Payment Date and in order that it may take possession of and use the Units pending the transfer of title to the Trustee under the Trust Agreements, has requested Nominee to take an assignment of Railroad's rights to receive and purchase the Units under the Purchase Order, to purchase the Units, to pay the purchase price

on the Payment Date, and to give Railroad temporary custody and possession of the Units pursuant to the terms hereof;

WHEREAS, Nominee is willing to accept such assignment, to purchase the Units, and to grant Railroad the right to use the Units upon the terms and conditions set forth below.

NOW THEREFORE, in consideration of the promises of the parties set forth herein, the parties agree as follows:

1. Railroad hereby assigns to Nominee its rights to receive and purchase the Units under the Purchase Order and Nominee hereby accepts such assignment and designates the Railroad as its agent to accept delivery of the Units.

2. Nominee shall purchase the Units from the Builder and pay the purchase price therefor as provided in the Purchase Order. The rights of Railroad hereunder in respect of each Unit shall commence on the date of acceptance of each Unit as agent for the Nominee under this Agreement and end on the earlier of October 31, 1986, or the date of payment of the purchase price of such Unit to the Nominee by the Railroad, Railroad's designee, or the Trustee under the Trust Agreement covering such Unit. When the purchase price of any Unit has been paid to Nominee pursuant to the preceding sentence, this Agreement shall automatically be terminated with respect to such Unit without further action by or notice to any party concerned. On delivery of each Unit to Railroad, Railroad will assume the responsibility and risk of loss with respect to such Unit.

3. Railroad shall purchase the Units from Nominee or provide a purchaser therefor on or before October 31, 1986, and Nominee shall sell the Units to Railroad or such purchaser as Railroad may provide, at the total purchase prices as set forth in the Purchase Order as it relates to the Units, and its obligation to do so shall be absolute, regardless of the condition of the Units at such time.

4. Title to the Units shall remain in Nominee and Railroad's right and interest therein is and shall be solely that of temporary possession, custody, and use under this Agreement. The Railroad or any third party acquiring an interest in the Units by reason of the contemplated financing of the purchase price of the Units by the Railroad shall not by virtue of this Agreement or the temporary possession and use of the Units by the Railroad under or pursuant to this Agreement or of anything permitted to be done by the Railroad hereunder in respect of the Units, acquire any title to or ownership of the Units, or any portion thereof, and title to or ownership of the Units shall remain solely in the Nominee. Transfer of title to any Unit to the Railroad or to any purchaser provided by the Railroad shall be effected only at the time of delivery by the Nominee of a bill of sale to the Railroad or to such purchaser.

Railroad shall do such acts as may be required by law, or reasonably requested by Nominee, for the protection of Nominee's title to and interest in the Units.

5. This Agreement is a financial arrangement, under which Railroad will have temporary possession, custody, and use of the Units to be purchased by Nominee, and the risk of loss of the Units after acceptance is on the Railroad. At the time of delivery of the Units, the Railroad shall be entitled, as between Railroad and Nominee, to the investment tax credit under Section 48 and Accelerated Cost Recovery under Section 168, or amortization under Section 184, of the Internal Revenue Code of 1954, and the Nominee shall not be entitled to such investment tax credit, cost recovery, or amortization.

6. On or prior to the Payment Date, the Railroad will advance to Nominee funds sufficient to enable Nominee to pay to the Builder the purchase price in respect of all the Units. These funds shall constitute security deposits in the hands of Nominee securing the ultimate payment of the purchase price to Nominee upon transfer of title to the Units from Nominee to Railroad or to a purchaser provided by Railroad. On the Payment Date, Nominee shall pay the Builder the purchase price for all the Units, whether delivered or not delivered, as specified in the Purchase Order. Upon receipt of the purchase price in respect of any Unit from the Railroad, the Trustee under the governing Trust Agreement, or from another purchaser of such Unit, Nominee will reimburse to Railroad that portion of the security deposits advanced by Railroad to Nominee equal to the purchase price of such Unit.

7. Railroad agrees that it will permit no liens of any kind to attach to the Units, and that it will (a) indemnify and save harmless Nominee from and against all claims, expenses, or liabilities of whatsoever kind arising out of the temporary possession, use and operation thereof by Railroad during the period when title thereto remains in Nominee, and (b) pay any and all taxes, fines, charges, and penalties that may accrue or be assessed or imposed upon the Units or the Nominee because of its ownership or because of the use, marking, operation, management or handling of the Units by Railroad while title to such Units remains in Nominee pursuant to this Agreement.

8. Railroad will, at its own expense, keep and maintain the Units in good order and running condition and will, at its option, repair or replace or promptly pay to Nominee the purchase price in cash of those Units which may be damaged or destroyed by any cause during the term that this Agreement applies to such Units.

9. Prior to the delivery of any Unit to Railroad it will be numbered with its appropriate road number; in addition, there shall be plainly, distinctly, permanently, and conspicuously marked and maintained by the Railroad upon each side of

each Unit in letters not less than one inch in height the following words:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH
THE INTERSTATE COMMERCE COMMISSION

Railroad may also cause the Units to be lettered with the name, initials or insignia of Railroad or any affiliate of Railroad or in such other ways as are appropriate for convenience of identification of the interest of the Railroad therein.

10. Nominee shall have the right to assign its rights under this Agreement or under the Purchase Orders pursuant to the financing arrangements referred to above.

11. Subject to this Agreement and the rights of Nominee hereunder, and without releasing Railroad from any of its obligations hereunder, Railroad shall have the right to assign or transfer its rights hereunder, or in particular Units hereunder, to any affiliate of Railroad.

12. The Nominee agrees that, upon receipt of all payments to be made or caused to be made to it by the Railroad under this Agreement, it shall upon request execute and deliver to or upon the order of Railroad bills of sale for the Units in customary form with full warranty of title, free and clear of all liens and encumbrances.

13. The Nominee shall have no obligation to warrant the condition of the Units but agrees to pass to Railroad or Railroad's nominee the Builder's warranties and those of any suppliers of components on or for the Units.

14. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Nominee and the Railroad have caused this instrument to be signed and acknowledged by their proper officers and their respective corporate seals to be hereunto affixed and duly attested, as of the day and year first above written.

ATTEST:


Assistant Corporate
Trust Officer

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY

By



Vice President

SOUTHERN RAILWAY COMPANY

ATTEST:


Assistant Secretary

By


Vice President

STATE OF Maryland)
CITY OF Baltimore) ss:

On the 19th day of May, 1986, before me personally appeared R. E. Schreiber, to me personally known, who being by me duly sworn, says that he is Vice President of Mercantile-Safe Deposit and Trust Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Patricia A. Conn
Notary

My Commission expires: 7-1-86

STATE OF Georgia)
CITY OF Atlanta) ss:

On the 22nd day of May, 1986, before me personally appeared P. R. Rudder, to me personally known, who being by me duly sworn, says that he is Vice President of Southern Railway Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Barbara C. Barden
Notary

My Commission expires: February 28, 1988